REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2262** (CTA Case No. 9402)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
PHILSAGA MINING CORPORATION, Respondent.	Promulgated: SEP 2 3 2021 2:39 p.m.

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DECISION

RINGPIS-LIBAN, *J.:*

The Case

Before the Court is a Petition for Review seeking the reversal of the Decision[1] dated December 17, 2019 ("Assailed Decision") and Resolution[2] dated March 06, 2020 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), cancelling the Final Decision on Disputed Assessment ("FDDA") dated June 28, 2016 and Formal Letter of Demand ("FLD") with attached Details of Discrepancies, and Final Assessment Notice ("FAN"), both dated April 13, 2016. Petitioner also prays that a new one be rendered ordering Respondent to pay the alleged deficiency income tax, expanded withholding tax ("EWT"), and compromise penalty it was assessed for the fiscal year ("FY") ending June 30, 2013.

1 Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Cielito N. Mindaro-Grulla and Jean Marie A. Bacorro-Villena concurring; Docket, pp. 2438-2460.

2 *Id.*, pp. 2493-2496.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR") vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code ("NIRC") of 1997, as amended, and other tax laws, rules and regulations.[3]

On the other hand, Respondent is a corporation duly organized and existing under Philippine laws under Securities and Exchange Commission Registration No. D200100478, with principal office at C.P. Garcia Highway, Sasa, Buhangin District, Davao City. It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 005-883-632-000.[4]

The Facts

The facts as found by the Second Division are as follows:

> "***Administrative Level***
>
> On June 5, 2014, [Respondent] received the *Letter of Authority* (LOA) No. LOA-121-2014-00000091 dated May 27, 2014, authorizing Revenue Officers Lilian Yvette Marie Aspiras, Julius Rex Bungabong, Roque Gildo Ganaden, Ma. Cleofas Magat, and Group Supervisor Teresita Villamor of the Large Taxpayers (LT) Excise Audit Division 1, to examine [Respondent's] books of accounts and other accounting records for all internal revenue taxes, except for value-added tax, documentary stamp tax, and other taxes, for the period July 1, 2012 to June 30, 2013.
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> Subsequently, on January 23, 2016, [Respondent] received the *Preliminary Assessment Notice* (PAN) dated January 21, 2016 from the BIR Large Taxpayers Service, assessing [Respondent] for deficiency income tax in the amount of [Php]255,889,779.55, deficiency withholding tax on compensation in the amount of [Php]856,079.96, deficiency EWT in the amount of [Php]65,857,276.34, and deficiency final withholding tax (FWT) in the amount of [Php]3,268,242.84, and administrative penalties in the amount of [Php]145,000.00, for the fiscal year ending June 30, 2013.

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3 *Id*, Decision, The Parties, p. 2439.
4 *Id.*

On February 09, 2016, [Respondent] filed its reply to the PAN, captioned as *Re: Protest Letter (To the Preliminary Assessment Notice)*.

Thereafter, on April 15, 2016, [Respondent] received a *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies*, and *Final Assessment Notice* (FAN), both dated April 13, 2016. The FLD assessed [Respondent] for alleged deficiency taxes for FY ending June 30, 2013 in the total amount of [Php]330,688,687.49, inclusive of interest and penalties, broken down as follows:

Tax Type	Basic Amount	Interest	Total
Income tax	[Php]174,842,123.63	[Php]87,373,159.86	[Php]262,215,283.49
EWT	43,641,804.40	24,008,970.75	67,650,775.15
FWT	-	722,628.85	722,628.85
Compromise Penalty	100,000.00	-	100,000.00
Total Amount			P330,688,687.49

On May 16, 2016, [Respondent] filed its protest to the said FLD and FAN, captioned as *Re: Request for Reinvestigation.*

However, on June 28, 2016, [Respondent] received [Petitioner's] *Final Decision on Disputed Assessment* (FDDA). The FDDA assessed petitioner for alleged deficiency taxes for FY ending June 30, 2013 in the total amount of [Php]339,786,736.08, inclusive of interest and penalties, broken down as follows:

Tax Type	Basic	Interest	Compromise	Total
Income tax	[Php]174,842,123.63	[Php]94,654,256.52		[Php]269,496,380.15
EWT	43,641,804.40	25,826,382.88		69,468,187.28
FWT	-	722,628.85		722,628.85
Admin Penalty		-	100,000.00	100,000.00
Total Amount	[Php]218,483,928.03	[Php]121,202,808.05		[Php]339,786,736.08

On July 25, 2016, [Respondent] paid its alleged liability for interest on late remittance of FWT amounting to [Php]722,628.85, plus a compromise penalty in the amount of [Php]30,000.00

Proceedings before the Court

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On July 28, 2016, [Respondent] filed the instant Petition for Review"[5].

The Ruling of the Second Division

On December 17, 2019, the Second Division promulgated the Assailed Decision, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated June 28, 2016 issued against [Respondent] is **WITHDRAWN** and **SET ASIDE**. Moreover, the FLD and FAN, both dated April 13, 2016 issued by the BIR, assessing [Respondent] for deficiency income tax, EWT, and compromise penalty, for FY ending June 30, 2013 are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"[6]

Aggrieved, Petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 17 December 2019)"[7] on January 08, 2020, which the Second Division denied in the Assailed Resolution, to wit:

> "**WHEREFORE**, premises considered, [Petitioner's] **Motion for Reconsideration (Re: Decision promulgated 17 December 2019)**, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[8]

The Proceedings in the Court of Tax Appeals En Banc

On June 17, 2020, Petitioner filed the present "Petition for Review"[9].

On June 30, 2020, the Court issued a Resolution[10] ordering Respondent to comment on the Petition for Review.

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[5] *Id.*, Decision, The Facts, pp. 2439-2441.
[6] *Id.*, p. 2460.
[7] *Id.*, pp. 2462-2474.
[8] *Id.*, p. 2496.
[9] Rollo, pp. 1-21. Record shows that Petitioner received the March 06, 2020 Resolution on June 04, 2020; Docket, p. 2492.
[10] *Id.*, pp. 50-51.

On July 23, 2020, Respondent filed a "Motion for Extension of Time to File Comment/Opposition (To Petition for Review dated 15 June 2020)"[11] praying for an extension of ten (10) days from July 25, 2020 or until August 04, 2020 within which to file its comment. The Court issued a Minute Resolution[12] on July 28, 2020 granting the same.

On July 29, 2020, Respondent filed its "Comment/Opposition (To the Petition for Review 15 dated June 2020)"[13] ("Comment/Opposition").

On September 18, 2020, the Court issued a Resolution[14] noting Respondent's Comment/Opposition and referring the case to mediation.

Noting the parties' "No Agreement to Mediate"[15], the Court issued a Resolution[16] on October 21, 2020, submitting the instant case for decision.

Assignment of Error

Petitioner raises a single ground in support of its petition – that is, the Second Division has erred in ruling that Petitioner violated Respondent's right to administrative due process.[17]

The Arguments of Petitioner

Petitioner mainly avers that although the protest to the FLD and FAN was captioned as "Re: Request for Reinvestigation", it was actually a motion for reconsideration of the FLD and FAN. This is because no new documents were submitted by Respondent, nor were there new arguments. In fact, it was merely a rehash of Respondent's protest to the PAN. Hence, there was nothing new to consider for Petitioner, and he cannot be faulted by issuing the FDDA forty-three (43) days after the filing of Respondent's protest to the FLD and FAN.

Petitioner additionally submits that Respondent is liable for deficiency income tax deficiency EWT, and compromise penalty.

On the other hand, Respondent points out that the Petition for Review is merely a reiteration of past arguments already made in Petitioner's "Memorandum" and "Motion for Reconsideration" filed with the Second Division.

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11 *Id.*, pp. 52-56.
12 *Id.*, p. 57.
13 *Id.*, pp. 58-73.
14 *Id.*, pp. 75-76.
15 *Id.*, p. 77.
16 *Id.*, pp. 80-81.
17 *Id.*, Petition for Review, Assignment of Error, p. 3.

Moreover, Respondent asserts that Petitioner's failure to observe the sixty (60)-day period granted under Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of Revenue Regulations ("RR") No. 12-99 is tantamount to depriving the taxpayer of a real opportunity to be heard and thereby failing to satisfy the due process requirement under the law.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Resolution, denying Petitioner's "Motion for Reconsideration (Re: Decision promulgated 17 December 2019)", on March 06, 2020. Petitioner received said Resolution on June 04, 2020. Pursuant to Rule 4, Section 2(a)(1)[18] in relation to Rule 8, Section 3(b)[19] of the Revised Rules of the Court of Tax Appeals[20] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until June 19, 2020 within which to file his petition for review.

On June 17, 2020, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

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18 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

19 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

20 A.M. No. 05-11-07-CTA, November 22, 2005.

For violating Respondent's right to due process, the subject assessment is void

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the instant Petition for Review is a reproduction of the "Motion for Reconsideration (Re: Decision promulgated on 17 December 2019)"[21] filed by Petitioner on January 08, 2020 before the Second Division, the arguments of which had been fully and exhaustively resolved by the Court in Division in the Assailed Decision. Be that as it may, and if only to put Petitioner's mind to rest and for purposes of emphasis, the Court *En Banc* will discuss them anew.

We echo the Second Division's ruling that part of the due process requirement to be observed in the issuance of a deficiency tax assessment is that the taxpayer, after filing a protest embodying a request for investigation, must be given a period of sixty (60) days within which to submit all relevant supporting documents in support thereof. This is found in Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99[22], as amended by RR No. 18-2013[23], the pertinent portions of which are quoted hereunder for ready reference:

> "**SEC. 228.** ***Protesting of Assessment.* —**
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> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **<u>Within sixty (60) days from filing of the protest</u>, all relevant supporting documents shall have been submitted**; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one

[21] Docket, pp. 2462-2474.
[22] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 06, 1999.
[23] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."[24]

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

> **(i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence.** It may involve both a question of fact or of law or both.

> **(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation.** It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

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For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his

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[24] *Emphasis and underscoring supplied.*

> **protest <u>within sixty (60) days from date of filing of his letter of protest</u>, otherwise, the assessment shall become final.** The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.
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> xxx xxx xxx"[25]

Petitioner contends, however, that Respondent's protest to the FLD and FAN was a request for reconsideration, not a request for reinvestigation, for which does the 60-day period does not apply.

We are not persuaded.

From the provisions above, it may be concluded that a protest is a request for reconsideration if there is no submission of additional or supporting documentary evidence. Conversely, if the protest is a request for reinvestigation, the taxpayer is required to submit additional or supporting documents.

In the instant case, a careful scrutiny of the records show that Respondent indicated in its protest to the FLD and FAN[26] that it would furnish Petitioner with supporting documents, to wit:

> "***A.* Difference between Receipts per disclosure vs SLS**
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> xxx xxx xxx
>
> The difference was due to adjustments on reimbursement of ancillary cost. <u>We will be providing the proof of adjustments after documents and records have been verified by the Company</u>.
>
> ***B.* Unsupported Expenses claimed per ITR**
>
> It is also your good office findings that community and development expenses and insurance were unsupported.

[25] *Emphasis and underscoring supplied.*
[26] Docket, Exhibit "P-5", pp. 1890-1897.

However, we beg to disagree as these were legitimate and substantiation were properly kept by the Company. We will be submitting the supporting documents to prove the same.

xxx xxx xxx

***H.* Disallowed creditable tax (EWT CAATTs Masterfile Extract vs SAWT)**

It has been assessed that the Company has disallowed creditable tax due to difference between CAATT's Extract vs SAWT. We beg to disagree as the taxes claimed as credit from the income tax were fully supported. We will be providing you copies of the certificate of taxes withheld to support the tax credits."[27]

Clearly, Respondent's manifestation of its intention to submit supporting documents in its letter-protest only goes to show that Respondent is seeking a reinvestigation of its tax assessments on the basis of additional evidence to be presented.

With Petitioner's issuance of the FDDA on June 28, 2016, before the lapse of the 60-day period or mere forty-three (43) days after the filing of the protest to the FLD and FAN, Respondent was essentially precluded from its right to submit supporting documents in support of its protest. This is in violation of the law which categorically grants the taxpayer a definite period within which to substantiate its administrative protest of the deficiency tax assessment issued against him. Such period cannot be dispensed with or waived by the taxing authority as the same is part and parcel of the due process requirement in the issuance of deficiency tax assessments.

Due process requires more than giving a person the right to be heard. Due process in administrative proceedings requires compliance with the following principles: (1) the right to a hearing, which includes the right to present one's case and submit supporting evidence, (2) **the consideration of the evidence presented**, (3) the decision must have some basis to support itself, (4) the evidence must be substantial; (5) **the decision must be rendered on the evidence presented at the hearing**, or at least contained in the record and disclosed to the parties affected, (6) the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate in arriving at a decision, and (7) the decision must be rendered in such manner that the parties would know the reasons for it and the various issues involved.[28]

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[27] *Underscoring supplied.*

[28] *See* Ang Tibay v. Court of Industrial Relations, et. al., G.R. No. L-46496, February 27, 1940, Department of Health v. Priscilla G. Camposano, et. al., G.R. No. 157684, April 27, 2005 and

By failing to wait for the submission of the supporting documents to the protest to the FLD and FAN, Petitioner unduly deprived the taxpayer of a real opportunity to be heard and thereby failing to satisfy the due process requirement under the law. The FDDA was issued having been based only on a partially completed protest and without an examination of Respondent's relevant supporting documents.

In view of the foregoing, We see no reason to reverse the conclusion and ruling of the Second Division. The Court in Division correctly declared as null and void the deficiency income tax, and EWT assessments against Respondent for FY ending June 30, 2013 for violating Respondent's right to administrative due process.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on June 17, 2020 is **DENIED** for lack of merit. Accordingly, the December 17, 2019 Decision and March 06, 2020 Resolution in CTA Case No. 9402 are **AFFIRMED**.

Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amounts representing the assessed deficiency tax liabilities which was set aside and cancelled by this court.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Coalition of Associations of Senior Citizens in the Philippines, Inc. (Senior Citizens Party-List) v. Commission on Elections, G.R. Nos. 206844-45 and 206982, July 23, 2013.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(With due respect, with Concurring And Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(took no part)
MARIAN IVY FERRER REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2262** (CTA Case No. 9402)
	Present:
-versus-	Del Rosario, *P.J.* Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, and Reyes-Fajardo, JJ.
PHILSAGA MINING CORPORATION, *Respondent.*	Promulgated: SEP 23 2021 2:39 p.m.

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CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with the *ponente*'s finding that the protest filed by respondent Philsaga Mining Corporation (Philsaga), is a request for reinvestigation, as shown by Philsaga's clear manifestations in said protest to submit additional supporting documents.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, grants the taxpayer a period of sixty (60) days from filing of the protest, within which to submit all relevant supporting documents. This is likewise provided in Section 3.1.4 of Revenue Regulations (RR) No. 12-99,[1] as amended by RR No. 18-2013.[2]

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[1] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[2] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 8, 2013.

The issuance of the Final Decision on Disputed Assessment (FDDA) prior to the lapse of the 60-day period for the taxpayer to submit its supporting documents to its protest, is indeed a violation of the law which categorically grants such period. Such period cannot be dispensed with or waived by the taxing authority as the same is part and parcel of the due process requirement in the issuance of deficiency tax assessments.[3] Thus, the FDDA is rendered void for violating Philsaga's right to due process.

However, I am of the view that a void FDDA does not automatically render the FLD/FAN void as well.

In *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[4] (*Liquigaz case*) the Supreme Court stated that "a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other – unless the law or regulations otherwise provide."

> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.
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> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
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> The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. The

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[3] Decision, p. 10.
[4] G.R. Nos. 215534 and 215557, April 18, 2016.

> assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.
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> As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.
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> To recapitulate, a "decision" differs from an "assessment" and failure of the FDDA to state the facts and law on which it is based renders the decision void – but not necessarily the assessment. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[5]

In the instant case, the violation of due process occurred after the issuance of the FLD/FAN, when the FDDA was prematurely issued precluding Philsaga from completing the submission of its additional supporting documents. Thus, it is only the premature issuance of the FDDA which is violative of Philsaga's right to due process. Following the *Liquigaz* case, the void FDDA does not *ipso facto* render the FLD/FAN void. It is as if there was no decision rendered by the CIR, which inaction is appealable to the CTA.

Thus, I vote to grant the petition for review and to determine the merits of the assessments based on the evidence and documents available.

CATHERINE T. MANAHAN
Associate Justice

[5] *Id.*